Supreme Court, U.S.
FILED

No. 961524 MAR 20 1997

OFFICE OF THE CLERK

In The Supreme Court Of The United States

October Term, 1996

Gettys Glaze, et al.,

Respondents,

v.

Jack Grooms, et al.,

Petitioners

On Petition for a Writ of *Certiorari* to the Supreme Court of the State of South Carolina

PETITION FOR WRIT OF CERTIORARI

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58 pp

Question Presented

The South Carolina Secretary of State chartered a town and the South Carolina Supreme Court made it operational by ordering an election for Mayor and Town Council. Does the State have unfettered discretion to nullify, by a retroactively applied judicial decision, that Town's incorporation when to do so impairs contractual obligations of the Town, acquired through three years of operation after the State Supreme Court ordered the election of officers?

Gettys Glaze, Robert B. Kizer, Catherine E. White, and the City of Charleston, a Municipal Corporation,

Respondents,

v.

Jack Grooms, Elizabeth Green, Pamela Ohlandt, William Wilder and George Bloodworth, in their official capacities as Commissioners of Election for the Proposed Town of James Island, and in their official capacities as managers of Election for the proposed Town of James Island, James Miles, in his capacity as Secretary of State for the State of South Carolina, and the Town of James Island,

Petitioners,

Of whom:

Jack Grooms, Elizabeth Green, Pamela Ohlandt, William Wilder and George Bloodworth, in their official capacities as Commissioners of Election for the Proposed Town of James Island, and in their official capacities as managers of Election for the proposed Town of James Island, and the purported Town of James Island,

Are Petitioners.

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IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1996

Gettys Glaze, Robert B. Kizer, Catherine E. White, and the City of Charleston, a Municipal Corporation,

Respondents,

v.

Jack Grooms, Elizabeth Green, Pamela Ohlandt, William Wilder and George Bloodworth, in their official capacities as Commissioners of Election for the Proposed Town of James Island, and in their official capacities as managers of Election for the proposed Town of James Island, James Miles, in his capacity as Secretary of State for the State of South Carolina, and the Town of James Island,

Petitioners

Petition for a Writ of *certiorari*
to the Supreme Court of the
State of South Carolina

Petitioners Jack Grooms, Elizabeth Green, Pamela Ohlandt, William Wilder and George Bloodworth, in their official capacities as Commissioners of Election for the Proposed Town of James Island, and in their official capacities as managers of Election for the proposed Town of James Island, and on behalf of the purported Town of James Island, respectfully petition for a writ of *certiorari* to review a judgment of the Supreme Court of South Carolina.

Opinions Below

The opinion of the South Carolina Supreme Court is reported as *Glaze v. Grooms*, 478 S.E.2d 841(S.C. 1996).

Jurisdiction

This appeal concerns an opinion issued November 18, 1996, by the South Carolina Supreme Court, *Glaze v. Grooms*, 478 S.E.2d 841 (S.C. 1996). A Petition for Rehearing and a Motion for a Stay were timely filed and denied on December 20, 1996. Id.. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a), in that the court of last resort in South Carolina has rendered a final judgment respecting the federally protected interest in contracts unimpaired by State action, particularly those contracts which are the direct product of cherished First Amendment voting and speech rights. Those federal questions are substantial and were

necessarily decided in the state proceedings.

The complaint sought, *inter alia*, to nullify the results of a municipal incorporation election and to enjoin the election of municipal officers (Mayor and Council). Under state law, once the election for officers was held the municipality's certificate of incorporation was activated.

The Town raised the defense, among others, that granting the relief violated due process and that the town's operations and contracts would be impaired. No adequate nonfederal grounds support the state court ruling on these issues.

Constitutional and Statutory Provisions Involved

Art. I, Sec. 10 of the United States Constitution provides, in pertinent part:

> No State shall pass any Bill of Attainder, ex post facto law, or Law impairing the Obligation of Contracts. . . .

The First Amendment provides, in pertinent part:

> Congress shall make no law ... abridging the freedom of speech ... or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The South Carolina incorporation statute

at issue, S.C. Code § 5-1-40 (1976), provides:

> Except as otherwise provided by law, the citizens of any proposed municipality in this State, desiring to be incorporated, shall file with the Secretary of State their petition for that purpose, setting out the corporate limits proposed for the municipality and the number of inhabitants therein and signed by fifty qualified electors thereof and fifteen percent of the freeholders who reside within the proposed municipality.

Statement of the Case

This is a case about municipal self-

determination. It challenges on Constitutional grounds South Carolina's applying, retroactively, a new interpretation of its incorporation statute. That interpretation voided an election which the South Carolina Supreme Court had previously sanctioned by grant of *supersedeas*. The lower court had enjoined the election, and the *supersedeas* permitted it to proceed.

The results of that election were not appealed, but four years later the election was nullified by the state's retroactive application of its newly implied incorporation requirements.

In June, 1992, qualified persons residing in certain unincorporated portions of Charleston County filed with

the Secretary of State a petition pursuant to S.C.Code Ann. §5-1-40 (1976) to incorporate a municipality from various land areas on a coastal island. The town was to be known as the Town of James Island. Upon receiving the petition, and pursuant to state law, the Secretary of State commissioned Petitioners to organize an election to gauge the will of the voters. The voters approved the incorporation. The result was certified by the managers of the election, and no appeal was taken from that certification.

Once incorporation was approved by the voters, another election, to fill the Mayor and Council seats, was scheduled for March, 1993, and the Secretary of

State issued a charter to the Town of James Island.

State law provides that once the election for officers is held the new municipality can exercise it powers. Respondents filed this suit seeking to enjoin that Mayoral and Council election, and to set aside the initial, unappealed election to incorporate.

A preliminary injunction was granted to halt the election for Mayor and Council members, but the Chief Justice of the South Carolina Supreme Court granted *supersedeas*, allowing the election to be held, as scheduled and as the Secretary of State requested.

The officers were elected. Pursuant to S.C.Code §5-1-90 (1976), the Town of

James Island came into existence as an incorporated municipality and commenced operations.

After trial on the merits the trial court nullified the incorporation because it determined that contiguity of land areas, while not required by the text of the incorporation statute, was an implied requirement. The court then defined contiguity in such a way that the areas making up the Town of James Island could not satisfy contiguity because the navigable waterways and marsh areas which separated the land areas of the Town had been previously "annexed" by, 478 S.E.2d at 744, and were "owned" by, 478 S.E.2d at 845, the City of Charleston. For that reason, the trial court concluded those

waterways could not be crossed by the Town of James Island to create contiguity among its constituent land parcels. In other words, the Court concluded that any crossing of a waterway necessarily occupied the entire waterway.

The trial court stayed its own order pending appeal. The South Carolina Supreme Court affirmed. Petitions for rehearing and a motion to stay were denied in December, 1996. This petition followed.

Reasons to Grant the Petition

South Carolina denies Due Process and violates the Contracts Clause when it authorizes an election which leads to formation of a Town then four years later nullifies that popular election by judicial decision applying retroactively a

new interpretation of the state's incorporation statute, impairing years of contractual commitments with no compelling state interest.

This is a case about the fundamental right of self determination and the impairment of contracts. There is no dispute that the voters of James Island petitioned to incorporate, and, at a popular election, voted to incorporate. They did so under a statute that set forth plainly certain requirements. There is no dispute that the Secretary of State issued a charter, or that Town officers were elected, installed, and administered the business of the Town for more than three years. In fact, the officers last serving were those elected in the Town's second municipal elections.

The results of neither of those elections were appealed.

South Carolina has nullified all of these elections by interpreting the state incorporation statute to include a contiguity requirement not stated in the statute,[1] and in interpreting that requirement in such a way that navigable waterways and wetlands, which typically are not barriers to contiguity of land areas, serve as barriers if another municipality (in this case, the City of Charleston) had previously crossed over that waterway, at some point, to annex

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[1] As set forth in considerable detail in the proceedings below, there are at least sixty-four other references to contiguity in the South Carolina Constitution and Code. The legislature is not hesitant to explicitly require contiguity.

other property.

The State generally has authority to interpret the incorporation statutes and define the criteria applicable to incorporation. *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907). That general authority is not unlimited. E.g., *Gomillion v. Lightfoot*, 364 U.S. 339, 345 (1960), explicitly holds that *Hunter* is restrained by the Constitution. *See also, Allied Structural Steel Company v. Spannus*, 438 U.S. 234 (1978) (Contracts Clause limits state's authority to act retroactively); *Bouie v. City of Columbia*, 378 U.S. 347 (1964) (Due Process limits state's authority to act retroactively). To act retroactively and affect a fundamental right such as

contracts is permissible only if a compelling state interest is present.

Petitioners complied with the statute as written. Four years later, the state changed retroactively the statutory requirements for incorporation, and in so doing impaired, without a compelling state interest the right of freedom of contract. Under *Allied Steel*, 438 U.S. 234, 247 (1978), such actions are permissible only if the state shows the imposition is "necessary to meet an important general social problem."

South Carolina has no compelling state interest for infringing Petitioner's contract and franchise interests. Indeed, in the courts below the executive branch of South Carolina,

in the form of the Secretary of State, argued in support of Petitioners' right to incorporate. Petitioners had a right to rely on the Secretary of State's interpretation of the incorporation requirements, and on the Secretary of State's advocacy in support of the Petitioners.

The best indicator of the unexpectedness of the State's retroactive interpretation is that the Secretary of State joined Petitioners in the argument below, not only in the trial court, but also on appeal to the State Supreme Court.

The statute itself makes no reference to contiguity. S.C. Code § 5-1-40 (1976)states:

> Except as otherwise provided by law, the citizens of any proposed municipality in this State, desiring to be incorporated, shall file with the Secretary of State their petition for that purpose, setting out the corporate limits proposed for the municipality and the number of inhabitants therein and signed by fifty qualified electors thereof and fifteen percent of the freeholders who reside within the proposed municipality.

The South Carolina Supreme Court contended, 478 S.E.2d 841, 843 n.4 (S.C. 1996), "we have previously recognized a contiguity requirement even in the absence of a statutory mandate to that

effect. Tovey v. City of Charleston, 237 S.C. 475, 117 S.E.2d 872 (1961)." *Glaze* at 478 S.E.2d at 843, n.4 (1996). The *Tovey* case did not involve the incorporation statute, and is no notice to Petitioners that incorporation requires contiguity, particularly when the Secretary of State supported Petitioners' interpretation.

The Constitutional manner for the state to create "implied" conditions for incorporation when those conditions infringe on Constitutional grounds is to apply such requirements only prospectively. South Carolina having permitted the municipality to elect officers, and thereby to become empowered, the state could not

retroactively abridge those rights.

In *Gomillion v. Lightfoot*, 364 U.S. 339, 344 (1960), this Court held that "Legislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution." The reach of the federal rights protected by *Gomillion* from retroactive state action is at issue in this petition. Granting the petition will determine how the rationales of *Gomillion v. Lightfoot*, 364 U.S. 339 (1960), *Allied Structural Steel Company v. Spannus*, 438 U.S. 234 (1978), and *Bouie v. City of Columbia*, 378 U.S. 347 (1964), extend to retroactive state action.

Conclusion

The petition for writ of *certiorari* should be granted.

Respectfully submitted,

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Appendix A

THE STATE OF SOUTH CAROLINA

In The Supreme Court

Gettys M. Glaze, Robert B. Kizer, Catherine E. White and the City of Charleston, a Municipal Corporation,

Respondents,

v.

Jack Grooms, Elizabeth Green, Pamela Ohlandt, William Wilder and George Bloodworth, in their capacities as Commissioners of Election for the Proposed Town of James Island, and in their official capacities as managers of Election for the proposed Town of James Island, James Miles, in his capacity as Secretary of State for the State of South Carolina and the Town of James Island,

Appellants.

Appeal from Charleston County

A. Victor Rawl, Judge
John C. Hayes, III, Judge

Opinion No. 24529
Heard September 19, 1996 - Filed November 18, 1996

AFFIRMED

J. Reese Daniel, of Columbia, Melinda A. Lucka, of James Island and J. Christian Adams, General Counsel for the South Carolina Secretary of State, of Columbia, for Appellant.

Frances I. Cantwell and William B. Regan, of Charleston, for Respondent.

WALLER, A.J.: This case involves a challenge to the 1992 incorporation of the Town of James Island. The circuit

court ruled the incorporation invalid due to a lack of contiguity of the areas incorporated. We affirm.

FACTS

In June, 1992, certain residents of the unincorporated areas of James Island petitioned the Secretary of State seeking to incorporate into a municipality. The Secretary issued a commission to four individuals (the Appellants, Election Commissioners) to conduct a referendum. The December 1. 1992 referendum resulted in favor of incorporation (2287 in favor, 2212 against). On December 17, 1992, the plaintiffs instituted the present action against the Election Commissioners

challenging the incorporation.[1] They sought declaratory relief and injunction. They claimed, inter alia, the areas of James Island incorporated laced the requisite contiguity.[2]

In June, 1993, the election commissioners filed a motion for judgment on the pleadings claiming the plaintiffs

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[1] The Secretary of State issued a certificate of incorporation to the Town three weeks later, on January 8, 1993.

[2] They also alleged the incorporation statute, S.C. Code Ann. § 5-1-40 (1976), was unconstitutional as it denied equal protection and that the residents had failed, as required by S.C. Code Ann. § 5-1-30 (Supp. 1995), to request annexation by the nearest municipality. Neither of these issues were addressed by the circuit court and, accordingly, they were not preserved for review. Cook v. SCDHPT, 309 S.C. 179, 420 S.E.2d 847 (1992).

had failed to name the proper parties in their complaint,[3] and that the present action had not been timely instituted. After a hearing, the circuit court denied the motion for judgment on the pleadings but on its own motion, pursuant to rule 21, SCRCP, ordered the Secretary of State and the Town of James Island be added as defendants.

A hearing on the merits was held in July, 1995. The circuit court held, inter alia, 1) Town lacked the requisite contiguity to incorporate, 2) the plaintiffs' action was timely filed, and 3) the town was not a de facto municipality.

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[3] They claimed the plaintiffs should have named the Secretary of State.

ISSUES

1. Did the Court err in finding that the Town lacked the requisite contiguity?

2. Was the action properly/timely instituted under S.C. Code Ann. § 5-1-110 (1976)?

3. Do respondents Glaze and City of Charleston have standing?

4. Did the Court err in finding Town was not a de facto municipal corporation?

1. CONTIGUITY

Appellants contend the circuit court erred in finding the Town without the requisite contiguity.[4] We disagree.

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[4] Initially, appellants assert nothing in § 5-1-10 et seq. requires incorporating areas to be contiguous. Contrary to appellant's assertion, territory sought to be incorporated must

It is essentially undisputed that there are nine "high land" areas of James Island, separated by marshlands and creeks which have previously been annexed by the City of Charleston and/or the City of Folly Beach. James Island used these marshlands and creeks to establish contiguity, claiming that since the "high lands" are otherwise contiguous, the fact that they are separated by water does not vitiate their contiguity.

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be contiguous. McQuillen, Municipal Corporations, § 3.15(f) - See also 1983 Op. Atty. Gen. 83-63 (contiguity requirement applies to incorporations as well as annexations). Further, we have previously recognized a contiguity requirement even in the absence of a statutory mandate to that effect. Tovey v. City of Charleston, 237 S.C. 475, 117 S.E.2d 872 (1961). We find the circuit court correctly held contiguity is required for incorporation.

We agree with Appellants' basic proposition that contiguity is not destroyed by water or marshlands which separate parcels of highland. See, e.g., Tovey v. City of Charleston, 237 S.C. 475, 117 S.E.2d 872 (1961); Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). However, the flaw in Appellants' argument is that it essentially disregards the fact that the waters' wetlands it seeks to use to establish contiguity have already been annexed by another municipality.[5]

In Tovey, we recognized that marshlands or wetlands, even if owned by

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[5] But for the previous annexations of the areas in question, we would agree that James Island met the requisite contiguity.

the State,[6] may be annexed by a municipality. Here, the City of Charleston and the City of Folly Beach had, prior to James Island's proposed incorporation, annexed the waters in question. Accordingly, once annexed by those municipalities, the territory became like any other annexed territory, i.e., it fell within that municipality's boundaries. It is implicit that contiguity must be achieved through adjacent parcels which are not within the corporate limits of another municipality.

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[6] Appellants also claim, citing Coburg v. Lesser, ___ S.C. ___, 458 S.E.2d 547 (1995), that respondent have failed to prove ownership of the wetlands. Tovey makes clear, however, that ownership is not required before a municipality may annex state owned property and wetlands.

Tovey supra; Town of Forest Acres v. Siegler, 224 S.C. 166, 77 S.E.2d 900 (1953). See also 62 C.J.S. Municipal Corporations § 85 (generally, a new municipality cannot be formed out of or embrace territory already included with the limits of an incorporated city). It defies the very concept of contiguity to suggest that one municipality may use an adjacent municipality's annexed territory to establish contiguity. Accordingly, the circuit court properly ruled, due to the prior annexation of the waters in question, that Town lacked the requisite contiguity to incorporate.

2. TIMELINESS

Appellants claim this action,

instituted three weeks prior to the issuance of the certificate of incorporation, was untimely as S.C. Code Ann. § 5-1-110 requires challenges to be instituted "within 60 days after issuance of the certificate." We disagree.[7]

If an action is required by statute within a certain time "after" an event, the general rule is that the action may be taken before the event, since the statute will be considered as fixing the

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[7] To the extent Appellants contend the action raises no procedural challenge, there in nothing for the Court's review as appellants never raised this contention below. McGee v. Bruce Hosp. System., _____ S.C. _____, 468 S.E.2d 633 (1996). Further, contrary to Appellant's contention, such a defect would not deprive the circuit court of subject matter jurisdiction. See Dove v. Goldkist, 314 S.C. 235, 442 S.E.2d 598 (1994); Moyd v. Johnson, 289 S.C. 342, 347 S.E.2d 97 (1986).

latest, but not the earliest, time for taking the action. 86 C.J.S. Time § 8, See also Kanavos v. Hancock Bank & Trust, 493 N.E.2d 311 (1982). When used relative to time "within" means "any time before; at or before; at the end of; before the expiration of; not beyond; not exceeding; not later than." BLACK'S LAW DICTIONARY 1437 (5th Ed. 1979). Consistent with this approach, the trial court found the action timely commenced. We concur with the trial court's ruling.

The Election Commissioners also assert they were not property named as defendants. We disagree.

A motion to dismiss a party is addressed to the court's discretion. A.J. Moore, J. Lucas, and G. Grotheer,

Moore's Federal Practice Section 21.03[1] (2d ed. 1987); Demian v. SCH&HFSC, 297 S.C. 1, 374 S.E.2d 510 (Ct. App. 1988). Section 5-1-110 authorizes a suit to challenge the incorporation procedures of a municipal corporation. The election Commissioners were the people who instituted the proceedings necessary to incorporate and who forwarded to the Secretary of State the maps (which did not reveal a lack of contiguity) outlining the proposed area of James Island. As such, we find they were properly named as parties.

Further, the trial court properly declined to dismiss the suit in favor of adding the Secretary of State and Town as defendants. See Rule 19, SCRCP (joinder

of necessary parties) and Rule 21, SCRCP (misjoinder of parties not a ground for dismissal; parties may be added on motion of the court as any stage of the action).

3. STANDING

Appellants next assert respondents Glaze and the City of Charleston have no standing to bring this action. We disagree.

To have standing, one must have a personal stake in the subject matter of the lawsuit, i.e., one must be a real party in interest. Townsend v. Townsend, (Op. No. 24484 (S.C. Supreme Court filed August 19, 1996) (Davis Adv. Sh. No. 28 at 18). A real party in interest is one with a real material or substantial

interest. Anchor Point, Inc. V. Shoal's Sewer Co., 308 S.C. 423, 418 S.E.2d 546 (1992); Rule 17 SCRCP. The general rule is that a municipality must allege an infringement of its own proprietary interests or statutory rights to establish standing. City of Spartanburg v. County of Spartanburg, 303 S.C. 393, 401 S.E.2d 158 (1991).

We find Glaze's status as a resident of James Island is sufficient to confer standing. Cf. Saint Andrews Public Service District v. City of Charleston, 294 S.C. 92, 362 S.E.2d 877 (1987) (annexation statute grants standing to any resident of any area to challenge a proposed annexation). Similarly, the City of Charleston, which owns the

territory Town seeks to use to establish contiguity, claims a sufficient infringement of its interest to confer standing.

Finally, we reject Appellants' contention that this action may be brought only by the State. Although the legal existence of a municipal corporation, once formed, is generally reserved to the State, a material omission in the acts necessary in the process of incorporation may be collaterally attacked. McQuillen, Municipal Corporations, § 3.49 (1987). Here, section 5-1-110 specifically authorizes a challenge to incorporation procedures without designation who may bring such a suit. In the absence of a

specific limitation by the Legislature, we decline to limit such challenges to the State.

4. DE FACTO CORPORATION

Lastly, appellants assert Town, having assumed all the duties and powers of a municipality, is a de facto municipality and is there fore not subject to attack. We disagree.

A de facto corporation is one so defectively created as not to be a de jure corporation, but nevertheless the result of a bona fide attempt to incorporate undo existing statutory authority, coupled with the exercise of corporate powers, and recognized by the courts as such in all proceedings except

a direct attack by the state questioning its corporate existence. McQuillen, infra, § 3.48. If, however, there is a material omission or fatal irregularity in the proceeding for the incorporation, a purported decree is void and does not create a de facto corporation. Id. at § 3.48(a). S.C. Code Ann. § 5-1-110 specifically authorizes such a challenge.

Here, the plaintiffs claimed a fatal irregularity in the incorporation proceeding, i.e., lack of contiguity. We find the challenge was both timely and proper and, accordingly, we decline to confer the status of a de facto municipality simply due to the length of the appeal. Accord Dalton v. Town Council of Mt. Pleasant, 241 S.C. 546,

129 S.E.2d 523 (1963) (refusal to uphold de facto existence where plaintiff had acted promptly in contesting annexation and sought, and been denied, an injunction pending the litigation)."[8]

The judgment below is

AFFIRMED.

TOAL, MOORE, BURNETT, JJ., and Acting Associate-Justice H. Samuel Stilwell, concur.

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[8] Moreover, it is quite evident from the record that Town attempted, from the outset, to establish itself as a de facto corporate entity, notwithstanding the pending challenge to its incorporation. Minutes of Town Meeting, March 3, 1993.

Appendix B

The State of South Carolina

In The Supreme Court

Gettys Glaze, Robert B. Kizer, Catherine E. White, and the City of Charleston, a Municipal Corporation,

Respondents

v.

Jack Grooms, Elizabeth Green, Pamela Ohlandt, William Wilder and George Bloodworth, in their official capacities as Commissioners of Election for the Proposed Town of James Island, and in their official capacities as managers of Election for the proposed Town of James Island, James Miles, in his capacity as Secretary of State for the State of South Carolina, and the Town of James Island,

Appellants

Appeal from Charleston County
A. Victor Rawl, Judge
John C. Hayes, III, Judge

Motion for a Stay

Appellants move the Court to stay (a) proceedings on this action or (b) issuance of the remittitur, pending a hearing in the United States District Court related to an action *(anticipated to be)* filed by the Town of James Island and certain of its individual citizens, pursuant to SCACR 220(b) and 224, on the grounds set forth more fully in the attached memorandum.

Melinda Lucka
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Appendix C

The State of South Carolina
In The Supreme Court

Gettys Glaze, Robert B. Kizer, Catherine E. White, and the City of Charleston, a Municipal Corporation,

Respondents

v.

Jack Grooms, Elizabeth Green, Pamela Ohlandt, William Wilder and George Bloodworth, in their official capacities as Commissioners of Election for the Proposed Town of James Island, and in their official capacities as managers of Election for the proposed Town of James Island, James Miles, in his capacity as Secretary of State for the State of South Carolina, and the Town of James Island,

Appellants

Appeal from Charleston County
A. Victor Rawl, Judge
John C. Hayes, III, Judge

Memorandum in Support of
Motion for a Stay

In this motion, references to the "City" refer to the Respondent City of Charleston, and the Appellants are collectively referred to as the "Town."

The Town requests the Court stay its proceedings or, in the alternative, stay issuance of the remittitur in light of an action anticipated to be filed in the United State District Court for the District of South Carolina. That action is anticipated to be filed Wednesday, December 18, 1996.

The nature of the action is to challenge the incorporation statute, S.C. Code §§ 5-1-10 et seq., as interpreted and applied by the Secretary of State to James Island, in light of constitutional, contract, and voting

rights infringed by that interpretation and application. Named as plaintiffs are various minority and other citizens of the Town of James Island, alleging infringements of various individual rights. Named as defendants in that litigation are the Secretary of State of South Carolina. The action seeks to enjoin the Secretary of State from applying that ruling if and when it issues from the Supreme Court.

The plaintiffs include various individuals who reasonably relied on the Town's 1992 incorporation and various court orders permitting it to operate pending litigation and appeal, and whose contract, civil, voting, and other political rights, including

constitutional rights, have been unduly intruded upon and burdened by the State of South Carolina, acting under color of state law and without a compelling or substantial state interest upon which to justify infringing those rights.

Specifically, the rights alleged to have been infringed are the rights protected by the United States Constitution, Art. I Sec. 10 (the Contract Clause and the Right of Franchise); the First, Fourteenth, and Fifteenth Amendments to that Constitution (freedoms of association and assembly; takings without just compensation); and the Voting Rights Act, including 42 U.S.C. § 1973(c) and 1973(h). The litigation contends that

no substantial or compelling state interest is present in interpreting into the incorporation statute a contiguity requirement and in applying that requirement to the Town of James Island. The elections overturned by this process, and the contractual implications for those who dealt in good faith with the Town on matters such as zoning, both before and after the trial court's ruling, are significant. The impacts from those decisions are set forth more fully in the enclosed affidavit from Mayor Sooy attached to this memorandum.

Conclusion

For the reasons set forth above,

the Appellants request the Court stay its action in this litigation, or at minimum stay the remittitur from being issued to the circuit court.

Respectfully submitted,

/s/
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Appendix D

THE SUPREME COURT OF SOUTH CAROLINA

December 20, 1996

Melinda A. Lucka, Esquire
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James Island, SC 29422

Re: Glaze v. Grooms

Dear Ms. Lucka:

The following Order has been endorsed on your Motion to a Stay in the above entitled case on appeal.

"Motion for a Stay is denied.

s/Jean Toal, A.C.J.
For the Court

Chief Justice Ernest A. Finney, Jr. not participating

December 20, 1996"

By copy of this letter we are advising all interested parties of this action.

Very truly yours,

s/ Clyde N. Davis

Clerk of Court

Appendix E

THE SUPREME COURT OF SOUTH CAROLINA

December 20, 1996

Melinda A. Lucka, Esquire
P O Box 12240
James Island, SC 29422

Re: Glaze v. Grooms

Dear Ms. Lucka:

The following Order has been endorsed on your Petition for Rehearing in the above entitled case on appeal.

"Petition for Rehearing is denied.

s/Jean Toal, A.C.J.

s/ James E. Moore A.J

s/ John H. Waller, Jr. A.J.

s/ E.C. Burnett, III A.J.

Chief Justice Ernest A. Finney, Jr. not participating

December 20, 1996"

The remittitur in this matter is today being forwarded to the Clerk of Court of Charleston County.

Very truly yours,

s/ Clyde N. Davis

Clerk of Court